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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 2944/2024 & CM APPL. 40067-40069/2024**
SHOBHA DHAWANPetitioner

Through: Mr. Kamal Chaudhary, Advocate.

versus

RAMESH CHANDRA KAPOOR & ORS.Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

% **19.07.2024**

1. The present petition has been filed under Article 227 of the Constitution of India.
2. The petitioner who was defendant No. 5 before the learned Trial Court in a suit for partition, has challenged order dated 02.06.2023 whereby her application filed under Order XXIII Rule 3 & 3A of CPC read with Section 151 CPC has been dismissed.
3. This case has some history.
4. The petitioner has already suffered a preliminary decree and a final decree.
5. According to her, after the passing of the preliminary decree, her statement was recorded in the Court but such statement was obtained fraudulently as she was misled. It is contended that based on such statement, which was not even accompanied by any mandatory written agreement, the final decree was passed.

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6. Admittedly, the preliminary decree as well as the final decree were challenged by the petitioner herein.
7. Initially, when RFA challenging the preliminary decree was taken up by this Court on 17.08.2015, the appeal was disposed of observing that nothing was left in the appeal as it was informed by both the sides that partition by *metes and bounds* had already taken place and the parties had got their respective shares.
8. According to the petitioner, since the final decree had been obtained in a fraudulent manner, she moved an application under Order XXIII Rule 3, 3A of CPC. Her such application has been dismissed, merely, in view of the observations made in the judgments passed in RFAs challenging the preliminary decree as well as the final decree.
9. It is submitted that since the final decree was based on consent, albeit obtained fraudulently, the appeal is not maintainable and, therefore, such appeal was dismissed.
10. This necessitated the petitioner to move said application under Order XXIII Rule 3 & 3A of CPC which has been dismissed without appreciating the factual background.
11. Mr. Chaudhary, learned counsel for petitioner, has drawn the attention of this Court to a subsequent development.
12. It is contended that RFA No. 433/2014 which relates to preliminary decree, is still very much alive as he has already moved an application under Section 151 CPC praying recall of the said order dated 17.08.2015.
13. He states that in order to avoid any conflicting orders, it will be appropriate if the aforesaid RFA and the present petition are considered by one and the same Bench.



14. The said RFA is now listed on 03.09.2024.

15. Subject to orders of Hon'ble the Acting Chief Justice, list the present petition i.e. CM(M) 2944/2024 along with the RFA No. 433/2014 on 03.09.2024 before the same Roster Bench.

MANOJ JAIN, J

JULY 19, 2024/sw